



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 18 2009

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David W. Harpole, Assistant Vice President – Energy Supply
Wisconsin Public Service Corporation
700 N. Adams Street
P.O. Box 19002
Green Bay, Wisconsin 54307-9002

Re: Notice of Violation issued to Wisconsin Public Service Corporation

Dear Mr. Harpole:

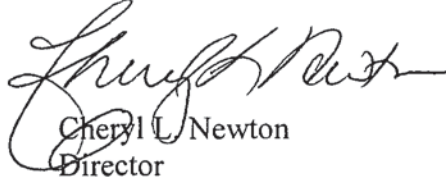
The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation (Notice) to Wisconsin Public Service Corporation (WPS). This Notice is issued in accordance with Section 113(a) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a).

EPA has determined that WPS is violating the Prevention of Significant Deterioration requirements under Section 165 of the Act, 42 U.S.C. § 7475, and the Wisconsin State Implementation Plan at its J.P. Pulliam Generating Station and its Weston Generating Station.

EPA is offering you an opportunity to confer with us about the violations cited in the Notice. The conference will give you an opportunity to present information on the specific findings in the Notice, and the steps you will take to bring the facilities into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

You may contact Sarah Marshall at (312) 886-6797 to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Cheryl L. Newton", written over the printed name.

Cheryl L. Newton
Director

Air and Radiation Division

Enclosure

cc: Bill Baumann, Wisconsin Department of Natural Resources
Linda Benfield, Foley & Lardner, LLP

standard bcc's: official file copy w/attachment(s)
originating organization reading file w/attachment(s)

other bcc's: Leslie Kirby-Miles, C-14J (w/attach)
David Schulz, AE-17J (w/attach)

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Wisconsin Public Service
Corporation
Green Bay, Wisconsin**

)
)
)
) **Proceedings Pursuant**
) **Sections 113(a)(1) and (a)(3) of the**
) **Clean Air Act,**
) **42 U.S.C. §§ 7413(a)(1) and (a)(3)**
)
) **EPA-5-10-WI-02**
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NOTICE OF VIOLATION

This Notice of Violation (Notice) is issued to Wisconsin Public Service Corporation (WPS) for violations of the Clean Air Act (Act), 42 U.S.C. §§ 7401 *et seq.*, at the J.P. Pulliam and Weston Generating Stations located in Green Bay and Rothschild, Wisconsin, respectively.

This Notice is issued pursuant to Sections 113(a)(1) and (a)(3) of the Act, 42 U.S.C. §§ 7413(a)(1) and (a)(3). The authority to issue this Notice has been delegated to the Regional Administrator of EPA, Region 5, and redelegated to the Director, Air and Radiation Division, Region 5.

A. STATUTORY AND REGULATORY BACKGROUND

Prevention of Significant Deterioration

1. When the Act was passed in 1970, Congress exempted existing facilities, such as the coal-fired power plants that are the subject of this Notice, from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in *Alabama Power v. Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979), "[t]he statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

2. The Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the Act establish specific requirements applicable to the construction and modification of major emitting facilities located in areas designated as either attainment or unclassifiable for

purposes of meeting the National Ambient Air Quality Standards (NAAQS). *See* 42 U.S.C. §§ 7470-7492.

3. These PSD provisions prohibit, among other things, a "major emitting facility" from constructing a major modification unless it has obtained a PSD permit that applies "Best Available Control Technology" (BACT), and conducts an analysis to determine the air quality impacts. *See* Section 165 of the Act, 42 U.S.C. § 7475.

4. States are required to adopt state implementation plans (SIPs) that contain regulations to implement the PSD provisions. *See* Section 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471.

5. A state may comply with Sections 110(a) and 161 of the Act by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.

6. If a state does not have PSD regulations that have been approved and incorporated by EPA into its SIP, EPA may incorporate the federal PSD regulations set forth at 40 C.F.R. § 52.21 into the SIP. 40 C.F.R. § 52.21(a).

7. On August 7, 1980 EPA disapproved Wisconsin's proposed PSD program. 45 *Fed. Reg.* 52676. Accordingly, EPA incorporated the PSD regulations of 40 C.F.R. §§ 52.21(b) through (w) into the Wisconsin SIP at 40 C.F.R. § 52.2581. The regulations codified at 40 C.F.R. §§ 52.21(b) through (w) were in effect until June 28, 1999.

8. Effective June 28, 1999, EPA approved and incorporated Wisconsin's PSD regulations into the SIP. 64 *Fed. Reg.* 28745. For all violations cited in this Notice, the applicable Wisconsin PSD regulations are the regulations codified at Wisconsin Administrative Code NR §§ 405.01 to 405.17.

9. "Major stationary source" is defined to include a fossil-fuel fired steam electric plant of more than 250 million British thermal units per hour (MMBtu/hr) heat input that emits or has the potential to emit one hundred tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a) and NR § 405.02(22).

10. "Major modification" is defined as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act. 40 C.F.R. § 52.21(b)(2)(i) and NR § 405.02(21).

11. "Significant" is defined as (in reference to a net emissions increase) an increase in the following amounts of the following pollutants: 40 tons per year for sulfur dioxide (SO₂), 40 tons per year for nitrogen oxides (NO_x), and 15 tons per year for particulate matter with a diameter of 10 micrograms (PM₁₀). 40 C.F.R. § 52.21(b)(23)(i) and NR § 405.02(27).

12. "Net emissions increase" means the amount by which the sum of the following exceeds zero: (a) any increase in emissions from a particular physical change or change in method of operation at a stationary source as calculated by paragraph (a)(2)(iv); and (b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. 40 C.F.R. § 52.21(b)(3)(i) and NR § 405.02(24).

13. Paragraph 52.21(a)(2)(iv)(c) provides: "[a] significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emission . . . and the baseline actual emission equals or exceeds the significant amount for that pollutant . . ."

14. Projected actual emissions means the maximum annual rate, in tons per year, at which an existing emission unit is projected to emit a regulated NSR pollutant in any one of the 5 years following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emission unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emission increase or a significant net emission increase. 40 C.F.R. § 52.21(b)(41).

15. A major stationary source constructing a major modification in an attainment area must, among other things, obtain a permit, install and operate BACT for each pollutant subject to regulation under the Act for which the modification would result in a significant net emissions increase, and conduct an analysis to determine the air quality impacts. 40 C.F.R. §§ 52.21(i), (j), and (k), respectively; and NR §§ 406.03, 405.07, and 405.08, respectively.

Title V Requirements

16. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources." The purpose of Title V is to ensure that all applicable requirements -- including PSD requirements -- are included in a source's Title V operating permit.

17. For the purposes of Title V of the Act, "major source" means, among other things, any source that emits or has the potential to emit one hundred tons per year or more of any air pollutant. Section 501(2)(B) of the Act, 42 U.S.C. § 7661(2)(B).

18. Section 503 of the Act, 42 U.S.C. § 7661b, sets forth the requirement to timely submit an application for an operating permit, including information required to be submitted with the application.

19. Section 504(a) of the Act, 42 U.S.C. § 7661c(a), requires that each Title V operating permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a SIP.

20. Under Title V of the Act, EPA promulgated regulations governing state Title V operating permit programs. The regulations are set forth at 40 C.F.R. Part 70.

21. EPA approved Wisconsin's Title V operating program on an interim basis on March 6, 1995, and fully approved the program on December 4, 2001. 60 *Fed. Reg.* 12128 and 66 *Fed. Reg.* 62951, respectively. Wisconsin's Title V operating permit program regulations are codified at Chapter NR 407, and are federally enforceable under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3).

22. A source subject to the Title V operating permit program shall not operate the source unless it obtains a permit that includes, among other things, emission limitations and standards, including those operational requirements that are applied to assure compliance with all applicable requirements. NR §§ 407.08 and 407.09. *See also* 40 C.F.R. § 70.1(b) ("All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.")

23. The owner or operator of a source subject to the Title V operating permit program is required to submit an application that includes, among other things, a citation to and description of all applicable requirements, and all other information necessary to determine any applicable requirement. NR §§ 407.05(4)(c)(7) and 407.05(4)(d)(1). *See also* 40 C.F.R. § 70.5.

24. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. NR § 407.05(9). *See also* 40 C.F.R. § 70.5.

B. FACTUAL BACKGROUND

25. WPS is a corporation authorized to do business in Wisconsin.

26. WPS is a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

27. At all times relevant to this Notice, WPS was the owner and/or operator of J.P. Pulliam and Weston Generating Stations located in Green Bay and Rothschild, Wisconsin, respectively.

28. J.P. Pulliam Generating Station is located in Brown County, Wisconsin; and the Weston Generating Station is located in Marathon County, Wisconsin. Both of these areas are classified as attainment for NO_x and SO₂ for all time periods relevant to the violations cited in this Notice.

29. J.P. Pulliam Generating Station is a fossil fuel-fired electric utility steam generating station of more than 250 million British thermal units per hour, and has a potential to

emit greater than 100 tons per year of NO_x, SO₂, CO, or PM. The station consists of four coal-fired boilers for electric generation, Units #5, #6, #7, and #8, with net generating capacities of 50, 62.5, 75, and 125 MW, respectively. Each boiler has a heat input greater than 250 million Btu per hour. Units #5, #6, #7, and #8 began operating in 1949, 1951, 1958, and 1964, respectively.

30. Weston Generating Station is a fossil fuel-fired electric utility steam generating station of more than 250 million British thermal units per hour, and has a potential to emit greater than 100 tons per year of NO_x, SO₂, CO, or PM. The station consists of three coal-fired boilers for electric generation, Units #1, #2, and #3, with net generating capacities of 60, 75, and 321.6 MW, respectively. Each boiler has a heat input greater than 250 million Btu per hour. Units #1, #2, and #3 began operating in 1954, 1960, and 1981, respectively.

31. J.P. Pulliam Station and Weston Generating Station are “major stationary source[s]” within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a) and NR § 405.02(22); and each constitutes a “major emitting facility” within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1).

32. Between 1994 and 2009, WPS undertook various physical changes (projects) to the J.P. Pulliam and Weston Generating Stations. The project changes include replacement of the superheater and waterwall at J.P. Pulliam Unit 8 in 1994; replacement of the economizer at Weston Unit 1 in 1990 and 1991; replacement of the economizer and secondary superheater at Weston Unit 2 in 1993; replacement of the superheater pendant platen assemblies at Weston Unit 3 in 2007; and replacement of superheater division panels at Weston 3 in 2009.

C. NOTICE OF VIOLATION

Violations of the Prevention of Significant Deterioration Provisions

33. Each project identified in Paragraph 32 caused a “significant net emissions increase” of SO₂, NO_x and/or PM 10, as defined at 40 C.F.R. §§ 52.21(b)(23)(i) and (b)(3)(i), and NR §§ 405.02(27) and 405.02(24).

34. Each project identified in Paragraph 32 constituted a “major modification,” as that term is defined at 40 C.F.R. § 52.21(b)(2)(i) and NR § 405.02(21).

35. WPS violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475, by constructing major modifications to existing major sources at the J.P. Pulliam and Weston Generating Stations and failing to, among other things, obtain a permit, install and operate BACT for each pollutant subject to regulation under the Act for which the modification resulted in a significant net emissions increase, and conduct an analysis to determine the air quality impacts as required by 40 C.F.R. §§ 52.21(i), (j), and (k), respectively; and NR §§ 406.03, 405.07, and 405.08, respectively.

Violations of the Title V – Permit Program

36. J.P. Pulliam Station and the Weston Generating Station are “major source[s]” as defined by Section 501(2)(B) of the Act, 42 U.S.C. § 7661(2)(B). Therefore, each station is subject to Title V of the Act and its implementing regulations at 40 C.F.R. Part 70 and Chapter NR 407.

37. As set forth in Paragraphs 33 - 35, WPS undertook major modifications to boilers at both J.P. Pulliam and the Weston Generating Stations, which subjected those boilers to the PSD provisions of the Act and its implementing regulations.

38. WPS violated and continues to violate Title V of the Act and its implementing regulations by operating J.P. Pulliam and the Weston Generating Stations with Title V permits that do not include all applicable requirements, failing to submit complete permit applications that identify all applicable requirements, and by failing to update the Title V permit applications to identify all applicable requirements. *See* NR §§ 407.08, 407.09, 407.05(4)(c)(7), 407.05(4)(d)(1), and 407.05(9); *see also* 40 C.F.R. §§ 70.1(b) and 70.5.


D. ENFORCEMENT

39. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the SIP, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

40. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that if the Administrator finds that a person has violated, or is in violation of any requirement or prohibition of any rule promulgated under Title V of the Act, the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

E. EFFECTIVE DATE

Dated: 11/18/09


Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent a Notice of Violation, No. **EPA-5-10-WI-02-**, by Certified Mail, Return Receipt Requested, to:


David W. Harpole, Assistant Vice President – Energy Supply
Wisconsin Public Service Corporation
700 N. Adams Street
P.O. Box 19002
Green Bay, Wisconsin 54307-9002

I also certify that I sent copies of the Notice of Violation by first class mail to:

Bill Baumann
Wisconsin Department of Natural Resources
101 S. Webster Street
P.O. Box 7921 (AM/7)
Madison, Wisconsin 53707

Linda Benfield
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5306

On the 18th day of November, 2009


Betty Williams, Administrative
Program Assistant

Certified Mail Receipt Number: 70091680 0000 7666 5032